

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON ELECTION INTEGRITY
COALITION UNITED, a Washington State
Nonprofit Corporation; DARCY LYNN
HOCKER; JOSEPH GRANT; EVELYN HOPF,

Plaintiffs,

v.

DIANA BRADRICK, Whatcom County Auditor;
WHATCOM COUNTY, and DOES 1-30,
inclusive,

Defendants,

and

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE,

Proposed Intervenor
Defendant.

No. 2:21-cv-01386-RAJ

PROPOSED INTERVENOR
DEFENDANT WASHINGTON
STATE DEMOCRATIC CENTRAL
COMMITTEE'S REPLY IN
SUPPORT OF MOTION TO
INTERVENE

WASHINGTON STATE DEMOCRATIC
CENTRAL COMMITTEE'S REPLY ISO MOTION
TO INTERVENE (NO. 2:21-CV-01386-RAJ)

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I. INTRODUCTION

Plaintiffs seek to call into question the validity of the 2020 election, suggesting (without any evidence) that fraud was committed across the State in favor of Democratic candidates. The Washington State Democratic Central Committee (“WSDCC”) has an interest in protecting its candidates and voters from unfounded attempts to challenge the validity of the election long after the time for doing so has passed. Accordingly, WSDCC is entitled to intervention as of right under Federal Rule of Civil Procedure (“FRCP”) 24(a) and permissive intervention under FRCP 24(b). Washington Election Integrity Coalition United’s (“WEiCU’s”) Opposition (“Opp.”) not only mischaracterizes the applicable legal standard, but attempts to use WSDCC’s Motion to Intervene (“Mot.”) as “evidence” of WSDCC’s supposed nefarious scheme to engage in “election fraud.” The absurd suggestion only further underscores why WSDCC should be a participant in this suit: to protect its reputational interests and the validity of the election. WSDCC respectfully submits that it readily satisfies FRCP 24’s requirements and that its Motion for Intervention should be granted.

II. ARGUMENT¹

FRCP 24(a) provides an absolute right of intervention if the intervenor shows: (1) timely application for intervention; (2) an interest which is the subject of the action; (3) that the disposition will impair or impede the applicant’s ability to protect the interest; and (4) the applicant’s interest is not adequately represented by the existing parties. *Arakaki v. Cayetano*, 324 F.3d 1078, 1083 (9th Cir. 2003) (citing *Donnelly v. Glickman*, 159 F.3d 405, 409 (9th Cir. 1998)). The Ninth Circuit favors intervention. *Prete v. Bradbury*, 438 F.3d 949, 954 (9th Cir. 2006) (“[T]he requirements for intervention are broadly interpreted in favor of intervention.”). WSDCC satisfies each of these requirements. Moreover, WSDCC should be granted permissive intervention because its defense

¹ WEiCU itself asserts only violations of the Public Record Act in this lawsuit. *See Washington Election Integrity Coalition United et al. v. Wise et al.*, No. 2:21-cv-01394-RAJ, ECF No. 18 at 3 (W. D. Wash. 2021) (“WEiCU is a party only to the PRA action . . .”). All other claims in this action are brought by the “citizen plaintiffs.” WEiCU, however, broadly advocates on behalf of the citizen plaintiffs in its Opposition. *See, e.g.,* Opp. at 3 (“Plaintiffs are asserting statutory claims involving an election official . . . relating to the conduct of their Elections Director.”).

1 and the main action have a question of law or fact in common. FRCP 24(b).

2 **A. WSDCC's Motion is Timely**

3 WEiCU's assertion that the Court should delay ruling on WSDCC's Motion to Intervene
4 until the Court decides WEiCU's Motion to Remand is unsupported by any law.² See Opp. at 2.
5 Moreover, WEiCU has not identified any prejudice that would be caused by WSDCC's
6 intervention at this stage in the proceedings. See *Nw. Forest Res. Council v. Glickman*, 82 F.3d
7 825, 836–37 (9th Cir. 1996) (citing *United States v. Oregon*, 913 F.2d 576, 588 (9th Cir. 1990))
8 (in determining if a motion to intervene was timely, considering “(1) the stage of the proceedings;
9 (2) whether the parties would be prejudiced; and (3) the reason for any delay in moving to
10 intervene.”). In fact, the Ninth Circuit directs parties to move to intervene as soon as practicable.
11 *California Dep't of Toxic Substances Control v. Com. Realty Projects, Inc.*, 309 F.3d 1113, 1120
12 (9th Cir. 2002) (“[a] party seeking to intervene must act as soon as he knows or has reason to know
13 that his interests might be adversely affected by the outcome of the litigation.”). The Court should
14 permit WSDCC to intervene at the outset of this case so that it may fully participate in this action.

15 **B. WSDCC Has an Interest in This Action Under FRCP 24(a)**

16 WSDCC has a strong interest in ensuring that the official certified results of Washington's
17 November 2020 valid election remain undisturbed, on behalf of its affiliated candidates and voters.
18 See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 189 n.7 (2008) (agreeing with the
19 unanimous view of the Seventh Circuit that the Indiana Democratic Party had standing to challenge
20 a voter identification law that risked disenfranchising its members); *Owen v. Mulligan*, 640 F.2d
21 1130, 1132 (9th Cir. 1981) (holding that “the potential loss of an election” inflicts injury on a
22 political party). Although WEiCU continues to insist that Plaintiffs are not currently seeking

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24 ² WEiCU also asserts that this Court lacks jurisdiction to hear WSDCC's Motion because Defendants' Notice of
25 Removal is “defective” in some unexplained way. Opp. at 2. Any procedural defect in Defendants' Notice of Removal,
26 however, would not affect this Court's subject matter jurisdiction, and may be cured at any point prior to entry of
judgment. See *Soliman v. Philip Morris Inc.*, 311 F.3d 966, 970 (9th Cir. 2002) (“[A] procedural defect existing at the
time of removal but cured prior to entry of judgment does not warrant reversal and remand of the matter to state
court.”) (quoting *Parrino v. FHP, Inc.*, 146 F.3d 699, 703 (9th Cir. 1998) (abrogated on other grounds by *Rueda Vidal*
v. Bolton, 822 F. App'x 643, 644 (9th Cir. 2020))).

1 decertification of the 2020 election, Opp. at 4, it is entirely unclear what relief they do seek, or
 2 what they hope to gain from an “audit” of the results. WSDCC should in all events be allowed to
 3 participate to protect its candidates and voters. And decertification aside, the mere pendency of
 4 this case threatens the same harms to WSDCC by giving credence to the unsupported conspiracy
 5 theory that the 2020 election was somehow rife with fraud.

6 WEiCU also suggests that elected officials become nonpartisan once they are elected and
 7 that, therefore, WSDCC has no interest in protecting the reputations of WSDCC’s affiliated
 8 Democratic officeholders. *See* Opp. at 6 (“Interestingly, the DCC expresses a concern for the
 9 ‘reputations’ of the Democrat party ‘officeholders’ . . . This is an extraordinary statement and an
 10 admission against interest that the officeholders remain ‘Democrat-owned’ once they are in office.
 11 If the elected officials represent the people (and not the interests of the DCC), the DCC cannot
 12 possibly have an interest in the outcome of the action.”). WSDCC works to elect Democrats who,
 13 in turn, work to uphold Democratic values once they are in office. It is no secret that a Democratic
 14 candidate remains a Democrat once in office (just as Republican or Independent elected officials
 15 are and remain Republicans or Independents). Those Democratic officeholders may also seek
 16 reelection, and WSDCC has an interest in defending their future election prospects by refuting this
 17 baseless attack on their election.

18 To be clear, the burden on WSDCC to show a cognizable interest for the purpose of FRCP
 19 24(a) is not a strenuous one. Whether an applicant for intervention has an interest “is a practical,
 20 threshold inquiry, and [n]o specific legal or equitable interest need be established.” *Citizens for*
 21 *Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th Cir. 2011). The interest
 22 inquiry is primarily a “practical guide to disposing of lawsuits by involving as many apparently
 23 concerned persons as is compatible with efficiency and due process.” *Jackson v. Abercrombie*, 282
 24 F.R.D. 507, 513–14 (D. Haw. 2012) (quoting *Forest Conservation Council v. U.S. Forest Serv.*,
 25 66 F.3d 1489, 1496 (9th Cir. 1995) (abrogated on other grounds by *Wilderness Soc. v. U.S. Forest*
 26 *Serv.*, 630 F.3d 1173, 1178 (9th Cir. 2011))). In general, the intervention requirements should be

1 construed “broadly in favor of intervention.” *Prete*, 438 F.3d at 954. WSDCC’s interests are
 2 clearly at issue here under any construction of FRCP 24’s requirement.

3 WEiCU’s Opposition, replete with accusations against WSDCC, only further evidences
 4 WSDCC’s interest in this action. WEiCU accuses WSDCC of attempting to “influence the
 5 outcome of elections” and asserts that WSDCC’s wish to intervene in this action is an “admission
 6 of guilt” that “exposes the [WS]DCC as NOT wanting election integrity in Whatcom County.”
 7 Opp. at 5. Hardly. WEiCU’s attempt to recharacterize WSDCC’s Motion to Intervene as a smoking
 8 gun only demonstrates *WEiCU*’s goal of painting Democratic entities and election officials as
 9 intent on committing fraud with unsupported accusations.³ *See id.*; *see also* Podlodowski Decl.
 10 ¶ 5. The suggestion is as absurd as it is unsupported by actual evidence.

11 Courts across the country have consistently allowed Democratic entities to intervene in
 12 disputes regarding the 2020 election.⁴ *See, e.g., Paher v. Cegavske*, No. 20-cv-00243-WGC, 2020
 13 WL 2042365, at *2 (D. Nev. Apr. 28, 2020) (granting intervention as of right to Democratic
 14 National Committee (“DNC”), Democratic Congressional Campaign Committee (“DCCC”), and
 15 Nevada State Democratic Party where “Plaintiffs’ success on their claims would disrupt the
 16 organizational intervenors’ efforts to promote the franchise and ensure the election of Democratic
 17 Party candidates”); *Issa v. Newsom*, No. 20-cv-01044-CKD, 2020 WL 3074351, at *4 (E.D. Cal.
 18 June 10, 2020) (granting intervention as of right to the DNC in suit brought by Republican entities);
 19 *Donald J. Trump for President, Inc. v. Cegavske*, No. 20-CV-1445 VCF, 2020 WL 5229116, at *1
 20 (D. Nev. Aug. 21, 2020) (granting intervention to DNC, DCCC, and Nevada State Democratic
 21 Party in suit brought by President Trump’s campaign);⁵ *Donald J. Trump for President, Inc. v.*

22 ³ WEiCU’s assertion that it is a nonpartisan organization is irrelevant. Opp. at 6. WEiCU’s lawsuit perpetuates the
 23 unsupported and harmful notion that election fraud is committed by or to benefit Democrats. Podlodowski Decl. ¶ 6.
 24 There is no evidence—none—to support such a proposition and WEiCU certainly offers none.

25 ⁴ WSDCC is not required to demonstrate, as WEiCU alleges, that WEiCU could have brought this lawsuit against
 26 WSDCC in the first instance. *See* FRCP 24; Opp. at 5. In fact, none of the 2020 election contest cases cited in this
 paragraph could have been brought directly against the Democratic parties that were allowed intervention.

⁵ Although WEiCU attempts to distinguish the facts of the *Paher v. Cegavske* and *Donald J. Trump for President, Inc. v. Cegavske* cases, the holdings of those cases support WSDCC’s motion to intervene as of right. The courts concluded that the intervening Democratic entities had demonstrated sufficient protectable interests to “ensure voters

1 *Benson*, No. 1:20-cv-1083, 2020 WL 8573863, at *3 (W.D. Mich. Nov. 17, 2020) (granting
 2 permissive intervention in a lawsuit challenging the 2020 election results to the City of Detroit,
 3 Michigan NAACP, the DNC, and the Michigan Democratic Party); *Libertarian Party of*
 4 *Pennsylvania v. Wolf*, No. 20-cv-2299, 2020 WL 6580739, at *1 (E.D. Pa. July 8, 2020) (granting
 5 permissive intervention to the Pennsylvania Democratic Party in a 2020 election dispute); *Davis*
 6 *v. Stapleton*, No. CV 20-62-H-DLC, 2020 WL 4815083, at *1 (D. Mont. Aug. 19, 2020) (granting
 7 intervention to the DCCC in a 2020 election dispute); *Cook Cty. Republican Party v. Pritzker*, 487
 8 F. Supp. 3d 705, 711 (N.D. Ill. 2020) (granting the DCCC’s motion to intervene in 2020 election
 9 dispute). There is no reason to depart here.

10 **C. WSDCC Cannot Rely on the Existing Parties to Represent Its Interests**

11 Although WEiCU contends that only the County can defend this lawsuit, Opp. at 4, the
 12 County certainly will not adequately represent WSDCC’s interests in this action. WSDCC is
 13 “required only to make a minimal showing that representation of its interests may be inadequate.”
 14 *People v. Tahoe Reg’l Planning Agency*, 792 F.2d 775, 778 (9th Cir. 1986). Here, the County’s
 15 interest is in ensuring that election laws are properly administered. WSDCC, however, moves to
 16 intervene to protect the reputation and future successes of its candidates and to uphold the valid
 17 results of the 2020 election on behalf of its affiliate candidates and voters. *See Issa*, 2020 WL
 18 3074351, at *3 (granting intervention as of right to the DCCC and the Democratic Party of
 19 California where the State’s interests in implementation of a challenged law differed from
 20 proposed intervenors’ partisan interests in representing Democratic voters).

21 **D. Permissive Intervention is Warranted**

22 Additionally and alternatively, WSDCC satisfies the requirements for permissive
 23 intervention. FRCP 24(b) provides that the Court may grant permissive intervention to any party

24 _____
 25 of the Democratic Party can vote” and “ensure the election of Democratic Party candidates,” warranting intervention
 26 as of right. *See Paher*, 2020 WL 2042365, at *2; *Donald J. Trump for President, Inc.*, 2020 WL 5229116, at *1. Here,
 WSDCC has an interest in ensuring that the votes cast by Democratic voters during the 2020 election remain counted
 and undisturbed, and that the baseless conspiracy theory articulated in the Complaint does not unjustifiably threaten
 the reputations and electoral prospects of Democratic candidates.

1 who “has a claim or defense that shares with the main action a common question of law or fact.”
 2 Here, as described in its Motion to Intervene, WSDCC has defenses that share such common
 3 questions of law or fact, such as whether Plaintiffs have stated a valid claim for relief.

4 WEiCU insists that WSDCC should not be permitted to intervene under FRCP 24(b)
 5 because WSDCC seeks to “influence the outcome of elections.” Opp. at 5. *Of course* WSDCC
 6 seeks to advance Democratic candidates who will prevail in elections—but that hardly makes
 7 permissive intervention inappropriate. Indeed, it demonstrates precisely the opposite: that the party
 8 should be allowed intervention. WSDCC’s Motion is timely, WSDCC has plainly demonstrated
 9 an interest in the outcome of the litigation sufficient to support permissive intervention, and
 10 Plaintiffs have not identified any delay or prejudice that will result from WSDCC’s intervention.
 11 Given WSDCC’s clear interest in protecting its candidates and voters, particularly in lawsuits that
 12 advance unsupported allegations of widespread fraud, WSDCC should be allowed to intervene.

13 **E. WSDCC’s Proposed Answer and Motion to Dismiss Comply with the Civil Rules**

14 WEiCU takes issue with WSDCC attaching its Proposed Answer and Motion to Dismiss
 15 to its Motion to Intervene, Opp. at 5–6, but WSDCC attached these proposed pleadings to comply
 16 with the requirements of the Federal Rules of Civil Procedure. WSDCC filed its Proposed Answer
 17 to comply with FRCP 24(c), which requires proposed intervenors to attach “a pleading that sets
 18 out the claim or defense for which intervention is sought.” WSDCC filed its Proposed Motion to
 19 Dismiss to avoid potentially waiving the FRCP 12(b) defenses it raised in its Proposed Motion.
 20 *See* FRCP 12(b) (“A motion asserting any of [the CR 12(b)] defenses must be made before
 21 pleading if a responsive pleading is allowed.”). Should WSDCC be granted intervention, it will
 22 file its Proposed Motion to Dismiss.

23 **III. CONCLUSION**

24 For the reasons set forth above, Proposed Intervenor Washington State Democratic Central
 25 Committee respectfully requests that the Court grant its Motion for Intervention.
 26

1 Dated: November 9, 2021

s/ Kevin J. Hamilton

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CERTIFICATE OF SERVICE

On November 9, 2021, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document and its attachments.

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2 **I certify under penalty of perjury under the laws of the**
3 **State of Washington that the foregoing is true and correct.**

4 EXECUTED at Seattle, Washington, on November 9, 2021.

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